

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM A. PHILLIPS, JR.

:
:
: NO. 03-4129

v.

:
:
:

RAILROAD CONSTRUCTION COMPANY, INC.
OF SOUTH JERSEY

**DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT
WITH AFFIRMATIVE DEFENSES**

1. Denied. After reasonable investigation, answering defendant lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations contained within this paragraph of plaintiff's Complaint. Accordingly, these allegations are denied and deemed at issue, with strict proof of same demanded at time of trial.

2. Admitted.

3. Denied. The allegations contained within this paragraph constitute conclusions of law to which no responsible pleading is required.

4. Denied. After reasonable investigation, answering defendant lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations contained within this paragraph of plaintiff's Complaint regarding plaintiff's alleged accident and injuries. Accordingly, these allegations are denied and deemed at issue, with strict proof of same demanded at time of trial. All remaining allegations contained within this paragraph constitute conclusions of law to which no responsive pleading is required.

5. Denied. After reasonable investigation, answering defendant lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations contained within this paragraph of

plaintiff's Complaint regarding plaintiff's alleged accident and injuries. Accordingly, these allegations are denied and deemed at issue, with strict proof of same demanded at time of trial. All remaining allegations contained within this paragraph constitute conclusions of law to which no responsive pleading is required.

6. (a-i) Denied. The allegations contained in this paragraph and sub-paragraphs constitute conclusions of law to which no responsive pleading is required. To the extent that these allegations can be construed as being of a factual nature, then these allegations are denied and deemed at issue, with strict proof of same demanded at time of trial.

7. Denied. After reasonable investigation, answering defendant lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations contained within this paragraph of plaintiff's Complaint regarding plaintiff's accident and injuries. Accordingly, these allegations are denied and deemed at issue, with strict proof of same demanded at time of trial. All remaining allegations contained in this paragraph constitute conclusions of law to which no responsive pleading is required.

8. Denied. After reasonable investigation, answering defendant lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations contained within this paragraph of plaintiff's Complaint regarding plaintiff's accident and injuries. Accordingly, these allegations are denied and deemed at issue, with strict proof of same demanded at time of trial. All remaining allegations contained in this paragraph constitute conclusions of law to which no responsive pleading is required.

9. Denied. After reasonable investigation, answering defendant lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations contained within this paragraph of plaintiff's Complaint regarding plaintiff's accident and injuries. Accordingly, these allegations are denied and deemed at issue, with strict proof of same demanded at time of trial. All remaining allegations contained in this paragraph constitute conclusions of law to which no responsive pleading is required.

10. Denied. After reasonable investigation, answering defendant lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations contained within this paragraph of plaintiff's Complaint regarding plaintiff's accident and injuries. Accordingly, these allegations are denied and deemed at issue, with strict proof of same demanded at time of trial. All remaining allegations contained in this paragraph constitute conclusions of law to which no responsive pleading is required.

11. Denied. After reasonable investigation, answering defendant lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations contained within this paragraph of plaintiff's Complaint regarding plaintiff's accident and injuries. Accordingly, these allegations are denied and deemed at issue, with strict proof of same demanded at time of trial. All remaining allegations contained in this paragraph constitute conclusions of law to which no responsive pleading is required.

WHEREFORE, answering defendant, Railroad Construction Company of South Jersey, Inc., demands judgment in its favor against all parties together with interest, costs and attorney's fees.

FIRST AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable Statute of Limitations.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's claims are barred or modified by the Comparative Negligence Act of Pennsylvania.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred, in whole or in part by the contractual agreements between answering defendant and its various subcontractors.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

Answering defendant owed no legally cognizable duty to the plaintiff.

SIXTH AFFIRMATIVE DEFENSE

Answering defendant breached no legally cognizable duty to the plaintiff.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's causes of action are barred or otherwise limited by the doctrine of assumption of the risk.

EIGHTH AFFIRMATIVE DEFENSE

Any damages allegedly sustained by plaintiff were the result of actions of third parties over whom answering defendant had no control.

NINTH AFFIRMATIVE DEFENSE

Plaintiff should be estopped from asserting the cause of action since plaintiff had the opportunity to observe and correct any alleged defective condition and failed to do so.

TENTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate his damages.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff has breached his contractual obligation owed to answering defendant with respect to his remedies and his obligation to obtain applicable liability insurance for the accident in question.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff is barred from asserting the instant action because of the doctrine of res judicata.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff is precluded from asserting the instant action because of the doctrine of accord and satisfaction.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims against answering defendant are barred by the applicable provisions of the Pennsylvania Workers Compensation Act.

WHEREFORE, answering defendant, Railroad Construction Company of South Jersey, Inc., demands judgment in its favor against all parties together with interest, costs and attorney's fees.

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

BY: _____

DANIEL D. KREBBS

Attorney for Defendant, Railroad Construction Company of South Jersey, Inc.

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